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No. 76-1633

In the Supreme Court of the United States

OCTOBER TERM, 1977

THOMAS ARTHUR GARRIGAN, PETITIONER

v.

ROBERT F. GIESE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner brought suit against respondents, employees of the Army, in the United States District Court for the Eastern District of Missouri seeking actual damages for a reduction of petitioner's civil service grade resulting from an alleged wrongful reduction in force from GS-9 to GS-5 and punitive damages for an alleged conspiracy among the respondents in devising the reduction in force. The district court granted the respondents' motions for summary judgment, holding that petitioner's suit was barred by the doctrines of *res judicata* and collateral estoppel (Pet. App. A-6 to A-12). The court of appeals affirmed (Pet. App. A-2 to A-4).

The court of appeals' decision is correct and further review is unwarranted. The present suit is the third action filed by petitioner challenging his grade reduction. Petitioner's first suit, filed in the Court of Claims, challenged the reduction in grade as being arbitrary, capricious and an abuse of discretion. The Court of Claims granted the government's motion for summary judgment, noting that petitioner had agreed to the Civil Service Commission's qualifications determination and that the Commission had found him not qualified for the position he claimed (Pet. App. A-8).[1]

Prior to the Court of Claims' decision, petitioner filed in the United States District Court for the Eastern District of Missouri a second suit presenting identical claims. The district court dismissed that suit with prejudice, since in the interim the Court of Claims had decided the questions adversely to petitioner. Petitioner did not appeal (Pet. App. A-8 to A-9).

Petitioner then filed the present action in the same court, alleging a conspiracy among the named individual defendants to bring about his allegedly wrongful grade reduction. Both that court and the court of appeals concluded that "all of the * * * requirements [of *res judicata* and collateral estoppel] have been met here" (Pet. App. A-3, A-11) and

[1]Petitioner's contention that he has "been frustrated and thwarted in his attempt to get a hearing on his causes of action before a Court" (Pet. 4) is insubstantial. The Court of Claims considered the substance of petitioner's claim of wrongful reduction in grade and found that he had been accorded full procedural due process and that there was no "evidence of arbitrary or capricious action, or abuse of discretion, either by the Army or the Civil Service Commission" (Pet. App. A-17). Petitioner has had full consideration of his grievance by the Army, the Civil Service Commission and the Court of Claims.

that the Court of Claims decision barred this suit.[2] As the court noted, the principal issue in each suit—the lawfulness of petitioner's reduction in grade—was the same; the Court of Claims had entered a final judgment on the merits of that issue; and petitioner was the plaintiff in each suit.[3] There is no occasion for further review of that issue, which turns primarily on the facts of the particular case.

Petitioner argues that the new allegation in the present suit that a conspiracy existed is sufficient to remove the bar of collateral estoppel. Both causes of action, however, are premised upon common questions and facts. Cf. *Lawlor* v. *National Screen Service*, 349 U.S. 322. As the district court stated (Pet. App. A-11):

> [T]he principal issue in each of Garrigan's suits has been the same, i.e., whether his reduction in grade was improper, arbitrary, capricious or an abuse of discretion on the part of either the Army or CSC. The Court of Claims' determination on the latter question effectually bars the plaintiff from relitigating it, regardless of plaintiff's new allegation that a conspiracy existed, because both actions are premised upon common questions and common facts. An "unlawful" objective cannot be pursued by conspirators

[2]The district court also held that the present defendants are privies of the United States of America, defendant in the Court of Claims. The court of appeals did not discuss this ruling since it was unnecessary to the district court's decision (Pet. App. A-4 n. 2). See *Blonder-Tongue Laboratories, Inc.* v. *University of Illinois Foundation*, 402 U.S. 313.

[3]Petitioner appears to contend (Pet. 5) that collateral estoppel does not apply because the Court of Claims' jurisdiction in this type of case was limited to the award of money damages. But that is the only relief petitioner sought in the present case, and if the Court of Claims had held in his favor, it would have awarded damages.

where that objective and the pursuit of that objective have already been determined to be "lawful".

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

JULY 1977.